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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

09 CR 1037 (RWS)

5 PATRICK NAYYAR,

6 Defendant.

7 -----x

8 New York, N.Y.

9 April 4, 2011

11:00 a.m.

10 Before:

11 HON. ROBERT W. SWEET,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the

17 Southern District of New York

EDWARD KIM

Assistant United States Attorney

18 B. ALAN SEIDLER

19 Attorney for Defendant

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1 (In open court)

2 MR. KIM: Edward Kim for the government.

3 MR. SEIDLER: Good morning. Alan Seidler for
4 Mr. Nayyar.

5 THE COURT: Yes.

6 MR. SEIDLER: Your Honor, this is my application. We
7 have a trial date of May 9. And I've received the e-mails of
8 the defendant from the computer hard drive. And they were I
9 think obtained by the government by use of a forensic expert.
10 And that creates issues in terms of our also having to retain a
11 forensic expert.

12 Also another issue is I recently found out that the
13 informant in this case was arrested and has a case pending in
14 the Eastern District, which I am going to have to investigate
15 and in rather detail, because it was the informant who had
16 almost all of the dealings with Mr. Nayyar here.

17 So it would be my application if we could move the
18 trial date. I've conferred with Mr. Nayyar and he is amenable
19 to that. When we came here last, it was going to be set for a
20 date further in the future, but Mr. Nayyar was not comfortable
21 with that last week. But I think he is now. And in light of
22 this additional information, I would ask to move this trial
23 date.

24 THE COURT: Well, what are you thinking about? A
25 month or longer? Here's the thing. The last time that I could

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1 try this -- now, from what you're telling me, does it sound
2 like maybe a week's trial?

3 MR. SEIDLER: Well, I think it's probably two weeks.

4 THE COURT: You do. Well, then I would have to start
5 it on May 23, which I could do. If I don't start it on May 23,
6 then I have a family obligation in California which is going to
7 last -- you might find this hard to believe -- for two and a
8 half months. So, it is either May 23 or September 19.

9 MR. SEIDLER: Well, I would prefer September 19. The
10 only problem I have is September 30, which is a Friday, and
11 that weekend my son is being married in California. So, I'm
12 not available that Friday.

13 THE COURT: How long do you have to be in California?

14 MR. SEIDLER: Friday, Saturday, Sunday, and I was
15 coming back Monday.

16 THE COURT: Suppose we were to put it down for the
17 19th, with the understanding that you will be out Friday and
18 Monday.

19 MR. SEIDLER: Okay.

20 THE COURT: All right. Let's do that. And hope that
21 we can work it all out.

22 What is the government's view? Do you see this as a
23 two-week operation or not?

24 MR. KIM: Your Honor, I think it well could spill into
25 two weeks.

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1 THE COURT: Okay. Let's hope we can make it a little
2 shorter. So, we'll put it over to the 19th. That's at the
3 defense's request and constitutes I take it a waiver of your
4 speedy trial rights.

5 MR. SEIDLER: Yes.

6 MR. KIM: Your Honor, just one thing from the
7 government, or two things, rather. Just as to Mr. Seidler's
8 point about the informant being arrested, I don't have
9 information that that is correct. That's just so the record is
10 clear. And the second point, I know the defendant himself had
11 objected at the last conference to the trial being adjourned.

12 THE COURT: I know.

13 MR. KIM: The government would just ask that your
14 Honor confirm with the defendant himself on the record that he
15 is okay proceeding.

16 THE COURT: I trust Mr. Seidler. However, Mr. Nayyar,
17 is this schedule all right with you?

18 THE DEFENDANT: To be honest with you, your Honor, I
19 would prefer sometime earlier than September. But if you don't
20 have the time until then, you have certain obligation, I'm
21 willing to work with you.

22 MR. SEIDLER: Is it okay? Patrick?

23 THE DEFENDANT: I'm not going to say I agree because I
24 don't want to wait that long.

25 (Defendant conferring with counsel)

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1 THE COURT: Let me be quite precise about it,
2 Mr. Nayyar. I've worried about this case from the very
3 inception because of the delays which have occurred, and you do
4 have speedy trial rights. There is no question about that.
5 And either you have to agree that you are going to waive those
6 rights, or I will have to try the case, as I've said, on
7 May 23. Now, it is up to you. Those are the choices because
8 my vacation plans do not constitute an appropriate basis on
9 which to delay the speedy trial requirements. So you have to
10 agree to it. And it's really up to you and your lawyer. We
11 know what Mr. Seidler's view of it is. But you're going to
12 have to agree to it, otherwise we'll have to go ahead on
13 May 23, which I'm perfectly prepared to do.

14 MR. SEIDLER: I think it's May 9, the trial date
15 presently.

16 THE COURT: To give you more time, I could put it over
17 to the 23rd. So it is really up to you all. We'll wait if you
18 want to have a discussion with Mr. Nayyar, Mr. Seidler.

19 (Defendant conferring with counsel)

20 MR. SEIDLER: Your Honor, we'll have to do it May 23.

21 THE COURT: May 23?

22 MR. SEIDLER: Yes, sir.

23 THE COURT: Okay. That's fine. That's what we will
24 do. Anything I can do to assist you further, Mr. Seidler?

25 MR. SEIDLER: No, thank you.

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1 THE COURT: In terms of --

2 MR. SEIDLER: No, thank you.

3 MR. KIM: Your Honor, the government moves to exclude
4 time now through May 23.

5 THE COURT: Yes.

6 MR. KIM: To allow defense counsel the additional
7 time.

8 THE COURT: Yes, that will be done. Thank you.

9 MR. SEIDLER: Thank you, your Honor.

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